

**NOT TO BE PUBLISHED IN OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.
---

COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re M.D., a Person Coming Under the Juvenile Court Law.
SAN DIEGO COUNTY HEALTH AND HUMAN SERVICES AGENCY,  Plaintiff and Respondent,  v.  T.H. et al.,  Defendants and Appellants.

D053638

(Super. Ct. No. J516693)

APPEAL from a judgment of the Superior Court of San Diego County, S. Patricia Spear, Judge. (Retired judge of the L.A. Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.) Affirmed.

Mother, T.H., and presumed father, Joshua D., appeal the judgment terminating their parental rights to their son M.D., contending the adoptability finding is unsupported by substantial evidence. T.H. also contends the juvenile court erred by declining to apply

the beneficial relationship exception to termination of her rights (Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(i)),<sup>1</sup> and Joshua joins in that contention. We affirm.

#### PROCEDURAL AND FACTUAL BACKGROUND

In May 2007 the San Diego County Health and Human Services Agency (the Agency) filed a dependency petition for 11-month-old M.D. because Joshua grabbed the leg of M.D.'s sibling, leaving three bruises. M.D. was detained and then placed in foster care. In November he was moved to the home of nonrelative extended family members (NREFM's) who became his de facto parents and wish to adopt him. The section 366.26 hearing took place in August 2008.

#### ADOPTABILITY

An adoptability finding requires "clear and convincing evidence of the likelihood that adoption will be realized within a reasonable time." (*In re Zeth S.* (2003) 31 Cal.4th 396, 406, citing *In re Jennilee T.* (1992) 3 Cal.App.4th 212, 223.) The Agency bore the burden of proof on this issue. (*In re Gregory A.* (2005) 126 Cal.App.4th 1554, 1557, 1559-1561.) A finding of general adoptability "focuses on the minor, e.g., whether the minor's age, physical condition, and emotional state make it difficult to find a person willing to adopt the minor." (*In re Sarah M.* (1994) 22 Cal.App.4th 1642, 1649, italics omitted.) This does not require "that the minor already be in a potential adoptive home or that there be a proposed adoptive parent 'waiting in the wings.' [Citations.]" (*Ibid.*) A specific family's willingness to adopt a child, however, "generally indicates [he] is likely

---

<sup>1</sup> All statutory references are to the Welfare and Institutions Code.

to be adopted within a reasonable time either by [that family] or by some other family."

(*Id.* at p. 1650, italics omitted.) Here, there is substantial evidence supporting the adoptability finding. (*In re Josue G.* (2003) 106 Cal.App.4th 725, 732; *In re J.I.* (2003) 108 Cal.App.4th 903, 911; *In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1154.)

Two-year-old M.D. was adorable, friendly, social, happy, coordinated, inquisitive, and bright. He was also born prematurely, medically fragile, under weight, and developmentally delayed; he had a diagnosis of failure to thrive; and he required multiple medical appointments. When he was first placed with the NREFM's he suffered from frequent tremors which later subsided. His frequent vomiting diminished to approximately once a week. He received in-home services from the Early Start Program to improve his cognitive, social, self-help, and developmental skills. He saw a nutritionist and attended physical, occupational, and speech therapy. T.H. contends her own medical and psychological issues also detracted from M.D.'s adoptability. She reported a history of auditory and visual hallucinations and depression, but a 2007 psychological evaluation found no evidence of psychosis or thought disorders. T.H. claimed she had sickle cell anemia, but there is no substantiation in the record.

M.D. had lived with the NREFM's for 10 months, was bonded to them, and viewed them as his parents. They were doing an excellent job of meeting his medical and developmental needs, and he had blossomed in their care. They had completed their adoptive home study and the adoptions worker believed it would be approved. Additionally, there were 20 other families available to adopt M.D. They had been given specific information about him and were willing and able to adopt a child with his special

needs. While psychological, behavioral, and developmental problems may make it more difficult to find adoptive homes, they do not necessarily preclude an adoptability finding. (*In re Lukas B.*, *supra*, 79 Cal.App.4th at p. 1154; *In re Jennilee T.*, *supra*, 3 Cal.App.4th at pp. 224-225.)

The juvenile court did not err by finding M.D. adoptable.

#### THE BENEFICIAL RELATIONSHIP EXCEPTION

Section 366.26, subdivision (c)(1) allows termination of parental rights upon clear and convincing evidence of adoptability. An exception exists if "[t]he parents have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship." (§ 366.26, subd. (c)(1)(B)(i).) A beneficial relationship is one that "promotes the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents." (*In re Autumn H.* (1994) 27 Cal.App.4th 567, 575.) The existence of this relationship is determined by "[t]he age of the child, the portion of the child's life spent in the parent's custody, the 'positive' or 'negative' effect of interaction between parent and child, and the child's particular needs . . . ." (*Id.* at p. 576.) Examining the evidence in the light most favorable to the judgment, we note that while T.H. maintained regular visitation and contact beginning in 2008, she failed to meet her burden of showing a beneficial relationship. (*Id.* at pp. 576-577; *In re Cristella C.* (1992) 6 Cal.App.4th 1363, 1373.)

At the time of the section 366.26 hearing, M.D. was two years old. He had been out of T.H.'s custody for one year three months and had lived with the NREFM's for 10 months. T.H.'s visits were always supervised. She had not attended any of M.D.'s

medical appointments, although she testified that she would like to attend if the appointments did not interfere with her work schedule.

M.D. was affectionate with the NREFM's and reluctant to separate from them and go into the visitation room with T.H.. T.H. interacted with M.D. during visits and monitored his behavior fairly well but sometimes needed direction. She was affectionate with him, and he sometimes accepted the affection. During many visits, M.D. patted the door, a sign that he was ready to leave and anxious to see the NREFM's. At the end of visits, he separated from T.H. easily, and his face lit up when he saw the NREFM's. The social worker believed T.H.'s relationship with M.D. was that of a friendly visitor, and he would not be harmed by cessation of contact. Moreover, he needed parents who would give him safety, security, and assurance that his medical needs were met.

T.H. argues the court relied on improper factors in determining the exception did not apply: the fact that her visits were supervised and the court's hope that visits would continue. We disagree. First, the court's statement, "hopefully [T.H.] would be able to continue to visit," does not mean that it "based its decision to terminate parental rights in part on the [NREFM]'s willingness to allow [T.H.] to continue to visit [M.D.]." (*In re S.B.* (2008) 164 Cal.App.4th 289, 300.) Second, the court did not, as T.H. suggests, equate supervised visits with the lack of a beneficial relationship. Rather, it properly cited the supervision requirement as an indication that T.H. was not "occupying a parental role."

The court did not err by declining to apply the beneficial relationship exception.

DISPOSITION

Judgment affirmed.

---

HUFFMAN, J.

WE CONCUR:

---

McCONNELL, P. J.

---

AARON, J.